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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,246	04/26/2000	Nadia M. Corlett	1032.039	2384

36790 7590 07/30/2007
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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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07/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary

Application No.

09/560,246

Applicant(s)

CORLETT, NADIA M.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/21/07</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> |
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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3/16/07 have been fully considered but they are not persuasive. Applicant argues the examiner has not addressed all of the limitations of the claims and has provided a "cut and paste" from an Office Action prepared by the Examiner in a related case. The action mailed 11/17/06 was provided for the claims in the present application. The action addresses the limitations of compressing a disposable diaper, retaining the disposable diaper, locating the diaper in an interior space defined by a flexible material, creating a negative pressure within the space, and hermetically sealing the diaper. Each of those limitations is discussed in the rejection of claim 27 below. The mentioning of the method of packaging to eliminate soiling and fitting into a pocket were used as motivation for providing an individually vacuum-packed diaper as opposed to the toy of Meyer. In view of the foregoing arguments, the rejection is maintained.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 27-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 11/421,758. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application claims a diaper that is vacuum-packaged. The present application claims a compressible absorbent article that is vacuum-packaged in a substantially flexible material, the step of compressing being performed without folding or rolling of the disposable diaper. The '758 application similarly claims the method of packing a vacuum-packaged article and requires a substantially air impermeable packaging material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a substantially air impermeable material to retain the article in its compressed condition. The steps recited in the '758 are broader than the steps recited in the present application for vacuum-packaging the absorbent article and thus obviously includes the scope of the method of packaging a vacuum-packaged diaper.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 27-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer USPN 4936460 in view of Cope et al. USPN 3716961.

As to claims 27-28, 34, 35 Meyer teaches a method of packaging an individually packaged toy, vacuum-packed within an interior space of a substantially flexible, substantially air impermeable material (Abstract, col. 1, lines 28-33 and col. 2, lines 29-36). The compressible article is capable of fitting into the pocket of an article of clothing as no specific dimensions are recited and the limitation of fitting into a pocket is relative to the size of the pocket.

Meyer teaches the packaging is hermetically sealed and a negative pressure exists with the packing such that the compressed article is maintained in a compressed condition (col. 2, lines 29-36 and col. 4, lines 25-27). Meyer does not teach the article is a disposable diaper or training pant. However, vacuum-packaging disposable diapers is known in the art. For example, Cope teaches an individually vacuum-packed disposable diaper (Cope col. 3, lines 15-17 and col. 7, lines 29-45). Additionally, Meyer

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teaches vacuum packaging compressible items is desired to reduce relatively bulky items that occupy a substantial amount of shelf space when displayed for sale in retail stores. Meyer further teaches this method of packaging helps to eliminate soiling from handling. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Meyer with a disposable absorbent article, such as a diaper. Doing so would provide a diaper package that occupies less space as compared to an uncompressed diaper package. Individually packaging the diaper has the advantage of providing a diaper that is not subject to soiling or handling prior to use.

As to claims 29 and 30, Meyer/Cope teaches folding prior to vacuum-packaging (Cope col. 7, lines 30-45).

As to claims 31-33, Meyer/Cope do not specifically teach a folded arrangement having three crosswise folds or a rolled arrangement prior to compression. However, Meyer/Cope teaches the general conditions of reconfiguring the article prior to compression (Cope col. 7, lines 30-45). It would have been an obvious matter of design choice to fold the article as claimed or provide a rolled arrangement, since applicant has not disclosed the specific claimed arrangements solves any state d problem and it appears that the invention would perform equally well in a folded condition as taught in Cope.

As to claims 36–46, see the discussion of claims 27-33, *supra*. Meyer/Cope teaches compression to twenty percent (col. 1, lines 29-31) of the uncompressed thickness. The claimed reduction in volume would have been obvious to one of ordinary skill in the art by optimizing the caliper or size of the article and the extent of compression. Moreover, discovering optimum values only involves routine skill in the art, *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Primary Examiner
Art Unit 3761

June 25, 2007